

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ACADIA INSURANCE COMPANY, as :
Subrogee of St. Paul Street, LLC :

Plaintiff :

v. :

NER CONSTRUCTION MGMT., INC. :

Defendant :

CIVIL ACTION NO.
04-12557-WGY

AFFIDAVIT OF PATRICK J. LOFTUS, III, ESQUIRE
IN SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT

COMMONWEALTH OF MASSACHUSETTS)
)ss:
COUNTY OF SUFFOLK)

Patrick J. Loftus, III, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and I represent the plaintiff in the above-entitled action. I am familiar with all of the facts and circumstances in this action.
2. I make this Affidavit in support of plaintiff's application for entry of a default judgment against defendant.
3. The time within which the defendant may answer or otherwise move with respect to the Complaint herein has expired; said defendant has not answered or otherwise moved with respect to the Complaint, and the time for the defendant to do so has not been extended.
4. Said defendant is not an infant or incompetent. Defendant is not presently in the military service of the United States based on the facts set forth in the Affidavit of Service.

5. Said defendant is indebted to the plaintiff, Acadia Insurance Company in the following manner:

(a) Prior to January 31, 2004, plaintiff's insured, St. Paul Street, LLC, contracted with defendant NER Construction Management, Inc. (hereinafter "NER") to do roofing work on a condominium construction project on St. Paul Street in Brookline, Massachusetts.

(b) Defendant NER stored flammable solvents and roofing materials in the basement of one of the condominiums, without the required permits.

(c) On or about January 31, 2004, a fire erupted in the basement of the condominium unit and spread throughout the other units. The cause of the fire is unknown but the fire was accelerated and allowed to spread due to the ignition of the illegally stored flammable materials.

(d) As a direct and proximate result of the aforementioned fire, plaintiff's insured's property and business was severely damaged and destroyed.

(d) As a direct and proximate result of the aforementioned fire, to date, Acadia paid its insured, St. Paul Street, LLC, \$999,704.64 to repair and replace its damaged property and for lost sales. The adjustment of this matter is still ongoing and Acadia expects to make additional payments to its insured in connection with this loss. Acadia is subrogated to St. Paul Street, LLC's right to recover from NER to the extent of this payment.

(e) On December 4, 2004, plaintiff filed suit against NER to recover damages. Suit was commenced in this Court based on diversity of citizenship and amount in controversy

(f) A copy of the Summons and Complaint was served on defendant NER on December 10, 2004.

(g) To date, defendant has not responded to the Summons and Complaint by answering or otherwise defending in accordance with the Federal Rules of Civil Procedure.

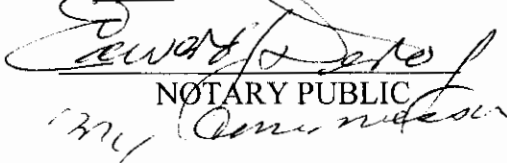
(h) Plaintiff has incurred \$150 in costs in filing the Complaint and \$40 in filing the Complaint.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief, that the amount claimed is justly due and owing to the plaintiff; that no part thereof has been paid.

Dated:

BY: 
PATRICK J. LOFTUS, III, ESQUIRE

Sworn to and subscribed
before me this 27th day
of June 2005.


NOTARY PUBLIC
My Commission Expires 2/7/08